

Sewage Handling & Disposal Advisory Committee Minutes

Date: November 7, 2008

In Attendance:

Members

Tom Basham, Chairman
Marcia Degen
Bob Lee
Pam Pruett, Recorder
Joel Pinnix
John Harper

Don Alexander
Bill Keeling
Mike Lynn
Robert Wadsworth
Raymond Freeland
V'lent Lassiter

Guests

Elizabeth Deitzman, VDH-OEHS
John Schofield, VDH-OEHS
Pete Kesecker, COS/Advantex
Mike McCulley, Premier Tech
Scott Saulls, Orenco Systems, Inc
Mary Clark, Premier Tech
Bob Mayer, American Manufacturing
Roger Cooley, RCooley LLC
Kimberly Harper, LRH Soil
Eric Tambourine, MSCI
Chris Beatley, Delmarva Septic
David Hogan, Balzer & Associates
Michael Burch, Natureworks Inc

Allen Knapp, VDH-OEHS
Rick Blackwell, Blackwell Engineering
John Payne, Bord na Mona
Kent Taylor, Clear Stream
John Aulbach, VDH-OEHS
Allen Knapp, VDH-OEHS
Mike McCulley, Premier Tech
Quinn Zimmerman, SEA Ltd
Bob Willoughby, LRH Soil
Gene Rutledge, The Vision Group
Perry Shanklin, H & W
Carl Perry, E-Z Treat
Kevin Wastler, Fairfax Co HD

Via Polycomm: Jerry Franklin, Loudoun County Health Department

The meeting was called to order at 10:00 a.m. by Tom Basham.

Administration

- Mr. Basham requested all visitors sign in on the visitors sign in sheet so that their attendance could be recognized and recorded. Mr. Basham recognized the large number of visitors in attendance and advised the guests that an attempt would be made to hear as many of the visitors as possible; however, he stated that due to the number of guests and limited time available, it may not be possible to hear each individual. Mr. Basham requested guests wait to be recognized by the committee before speaking. Further, Mr. Basham stated that the amount of time each individual would be permitted will be limited.
- The agenda for the meeting was reviewed. Bob Lee moved to accept the agenda. Marcia Degen seconded the motion. A vote yielded all "ayes" and the motion carried.
- The minutes of the September 12, 2008 meeting were reviewed by the committee. Tom Basham indicated that Bob Mayer's name on pg. 2 had been incorrectly spelled as "Mayor" and should be changed. Joel Pinnix stated that the notes halfway down on page 3 should be amended to reflect that Joel had stated it should be possible to create a performance criterion in 2 pages—Mr. Pinnix did not agree to prepare the standard.

- Ray Freeland moved to accept the minutes as amended. Bill Keeling seconded the motion. A vote yielded all ayes and the motion carried.

Old Business

- Joel Pinnix, Chairman of the Rules Subcommittee discussed the draft of the Sewage Handling & Advisory Committee Rules with the group. He indicated that the draft had gone under several iterations but that the document is loosely based on *Roberts Rules of Order*. The proposed rules are also intended to be somewhat free flowing. Joel felt that there were a few main issues to be resolved; those being (1) How many members are required for a quorum, (2) Which members are permitted to vote, and (3) How many members are required to change rules, once they are established.

Bob Lee suggested a roll call as part of the general order of business in order to acknowledge a quorum.

Tom Basham stated that he felt the group had been working on a 50% minimum of the filled seats to recognize/establish a quorum. Tom also requested the committee tackle the issue of voting members before taking on the quorum issue.

V'lent Lassiter stated that the Chesapeake Bay Director of Wastewater Engineering title is incorrect. The position no longer exists. Per Bill Keeling, this is a regulations based issue that needs to be addressed by regulation change.

Joel Pinnix stated that VDH representatives, ex-officio or current, should not be on the board and have voting rights because they already have influence within the agency. Don Alexander questioned whether VDH would have a place on the board under the new regulations. Marcia Degen stated that since other agencies are permitted to vote, VDH should be allowed to vote. Tom Basham indicated that the charge of the committee is to advise VDH. Pam Pruett stated that VDH is a stakeholder in the industry/community. Bob Lee stated that in the federal government, agency staff assists the committee but do not get to vote. Tom Basham disagreed with Bob Lee's statement. Joel stated that he felt VDH "double dips" because the already advise and they are allowed to vote. He feels that the Sewage Advisory Board represents public input. Tom Basham replied that the value of the board would be diminished by excluding VDH.

Tom Basham moved to have the chairperson as a voting member of the committee. Mike Lynn seconded the vote. Discussion of the matter included Tom's statement that no one would want to head up the committee if they couldn't vote. Ray Freeland stated that other, similar committees permit the chairperson to vote. Bob Mayer, guest and former chair person of the committee stated he felt that the chairperson should be permitted to vote.

A vote was taken—Don Alexander and Bill Keeling abstained. The remaining votes were all "ayes" and the motion passed.

Tom Basham moved that it not be necessary to stand in order to make a motion. John Harper seconded the motion.

Joel Pinnix stated that standing would attain recognition from the board.

Bob Lee moved to amend the motion so that standing and or raising one's hand be stricken from the rules. Further, all similar language would be stricken from the rules.

A vote resulted in all “ayes” and the amended motion passed.

Bill Keeling raised the issued of what number confirmed a quorum. He stated that $\frac{2}{3}$, plurality, or majority of voting members is required to call a question.

Bob Lee again stressed the need for a roll call.

Tom Basham stated he felt a secretary for the group is necessary.

Pam Pruett moved that minutes of the meeting shall be taken and the attendees recorded in the minutes.

Bob Lee seconded the vote. A vote yielded all “ayes” and the motion passed.

Bob Lee moved that ex officio members be permitted to vote. Tom Basham seconded the vote and stated that ex-officio members could abstain from a vote.

Ray Freeland asked if ex-officio members could vote now. Bob Mayer stated that he felt ex-officio members should vote.

Joel Pinnix moved to amend the motion so that current VDH members would be exempt from the vote. John Harper seconded the motion and a call for discussion was made. Joel Pinnix stated that because VDH is the regulatory authority, permitting VDH members to vote would give the agency “2 bites of the apple” and allow them to double dip.

Mike Lynn asked Don Alexander for his opinion. Don replied that both sides had good arguments but felt that if VDH is on the committee, then they should be voting members. If not, then VDH is staff to the committee and that would take a regulation change. Don added he could live with the decision either way. Mike then asked Allen Knapp and Elizabeth Deitzman if there was a legal problem with this. Allen replied that it was the committees’ responsibility to establish the rules.

The committee voted on the amended motion. The vote yielded 5 ayes, 2 nays, and 2 abstentions. The amended motion was passed. The group then voted on the original motion. The vote yielded all ayes with 2 abstentions. The original motion passed.

Bob Lee stated a proxy vote should be allowed if a voting member could not attend a meeting. Tom Basham replied that this issue is covered by substitute members attending the meetings.

Joel Pinnix moved to require a minimum vote by $\frac{2}{3}$ of the voting members to change the committee’s rules. Pam Pruett seconded the motion. The resulting vote yielded all ayes and the motion passed.

Tom Basham moved that 8 voting members be required to establish a quorum. Joel Pinnix seconded the motion. Tom Basham stated that a vote could be tabled if a quorum was not present for meetings. Ray Freeland agreed with Tom’s statement.

Bob Lee asked if there existed a commitment to use Polycomm technology or the telephones for meetings. Tom Basham replied yes, there is.

Bob Lee moved to amend the motion to require 9 voting members be present to establish a quorum because he felt an odd number is necessary in order to win a vote. John Harper seconded the amended motion.

Tom responded that with a quorum of 8, five votes to pass a motion are still required, yet a quorum is still established with less members. "It is genius!" he exclaimed. Tom called the question to vote. The vote yielded 2 ayes and all nays for the amended motion, therefore the genius lives and the amended motion failed.

A vote was taken on the original motion to require 8 voting members for a quorum. The vote yielded 8 ayes and 2 nays and the original motion passed.

The group conferred whether the rules should be amended with the motions passed, and then reissued as a final draft. Marcia Degen asked what kind of consideration would be given as to when the committee members receive the amended rules and/or other information. Tom Basham stated that while he thought it was a good idea to reissue a final draft for another vote, this may eliminate flexibility.

Joel Pinnix moved to adopt the rules as amended because no quorum may be present at the December meeting. John Harper seconded the motion and a vote resulted in all ayes and 1 (VDH) abstention. The motion passed. The new rules will be effective November 7, 2008.

Joel Pinnix observed that the university staff seat had been vacant and indicated that this was disturbing. He asked Don Alexander if or how this was being pursued. Don replied that Joel was welcome to search for a qualified party to fill the seat.

Tom Basham again requested that any visitors to the meeting sign in so that their presence could be recorded in the minutes. The group then took a 15 minute break.

New Business

- Implementation of House Bill 1166 (HB1166)

Tom Basham indicated that this topic is in reverse of the group's normal function. In lieu of making recommendations to the Health Department, this subject is a reaction to a new law on the books. Tom recognized Pete Keseker as a guest speaker.

Pete thanked the committee for hearing him. Pete indicated that the other advanced secondary effluent (ASE) treatment system manufacturers had also requested him to speak and added that they had voiced concerns in July about the viability of some of the designs that may result from GMP 146. Pete stated that Environmental Health Specialists (EHS's) are being expected to determine viabilities and that many EHS's are not comfortable with this. He was concerned that designs are being changed from ASE to secondary effluent with a PE's stamp of approval. He stated that the change over from ASE to secondary effluent treatment could and would result in groundwater contamination and asked why the concerns for groundwater contamination had been "tossed away". Pete asked that the committee suspend GMP146 until the manufacturers can meet with the sewage advisory board to sort the issues out. He added that he felt the GMP is not being used as intended.

Steve Halley, PE, with Environmental Services of Virginia asked what the definition of ASE is. Pete Keseker responded that this was the standard that was presented by the manufacturers as 10 mg/l BOD₅ and 10 mg/l TSS versus the secondary effluent standard of 30 mg/l BOD₅ and 30 mg/l TSS. Joel Pinnix indicated that the design standard for ASE is 10/10 and asked VDH for clarification. Don Alexander replied he would look into the matter and respond. Marcia Degen added that there are a lot of standards that aren't necessarily in the regulations. Tom Basham stated that in protecting public health and the environment, higher levels of treatment mitigate the impacts. He added that this sounds like a performance standard.

Don Alexander stated that the Virginia Administrative Code says VDH needs to be open to new technologies. ASE has been determined to be highly treated effluent in other states and in working with Dr. Ray Reneau at VA Tech. The 10/10 standard is not in the GMP's. The mean standard of 10 CFU per 100 ml sample in the treatment process plus the soil could not be met by the treatment units. VDH had to back down some on this requirement and use the standards for primary contact (swimming waters) for reasonable protection of public health. Don thinks he made some assumptions on this. Joel Pinnix questioned where the standard, 30/30 or 10/10 was to be measured from—the end of the treatment pipe or in the soil matrix and how this was determined. Don replied that this was measured both at the end of the treatment pipe and 12" below the pad bottom.

Bob Willoughby, LRH Soils was recognized to speak. He stated that although he didn't understand all the issues at hand, he felt it was proper to reduce stand offs to the water table with certain performance standards of the system. Perhaps effluent disinfection could be used with reduced stand offs. He didn't necessarily agree with putting secondary effluent into the water table.

Roger Cooley, PE and former VDH employee was acknowledged to speak. He offered a historical perspective of the subject. The alternative discharging systems performance requirements were originally used as a basis. Tom Basham asked if there was room to lessen the standards. Roger replied "no". He felt that long term acceptance rates (LTAR) need to be considered in system design. Per Roger, LTAR studies have revealed that suspended growth media LTAR is shorter than fixed film medias and that fixed film medias are a better method for use.

Quinn Zimmerman AOSE, was acknowledged to speak. He stated that the rules and regulations have not kept pace with today's technologies. He said that we have technology and science in place to use performance based criteria for system design. He feels the best available, prescriptive based technology should be utilized first for system design, before a performance based design. He is opposed to a PE using his soils work for designs outside of his recommendations. He reiterated that he felt the prescriptive designs should be relied upon first, before a performance based design.

John Payne with Bord na Mona indicated that the tested systems should be used before the untested.

Mike McCulley with Premier Tech added that balance must be used in the system design process. He felt that prescriptive based design solutions should be used before the performance based designs. He also stated that some parties have focused on the legal definition of system failure and misused it to gain advantage.

Don Williams, PE, was recognized to speak. He stated that in the theories of engineering work and other parts of building design, he can't recall where other codes are written to/for manufacturers. Codes in other

industries are performance based. Tom Basham provided an example of Microlam in the building industry. The industry has a performance standard for the application of this type of lumber. In the beginning, only Microlam could meet the performance standard. Tom also stated that the sewage disposal industry is in “catch up” mode.

A short discussion arose concerning the paradox of the reduction of stand off distances in faster soils versus the transmission of pathogens through faster soils.

Mary Clark, Premier Tech, was recognized to speak. She observed that no term exists for the treatment category of reduced footprint systems. She feels that different levels of treatment need to be distinguished.

Scott Sauls, Orenco, was recognized and spoke. He stated that we all agree that the industry needs to move to performance based standards. He stated the definition of system failure needs to be reviewed and amended. He requested a suspension of GMP146 and stated that the VDH interpretation of HB1166 is problematic.

Marcia Degen stated that perhaps a legal opinion going beyond the regulations is necessary. Bob Lee reported that he was concerned about reducing the standards in the rule about malfunctions. He felt that PuraFlo and Advantex standards may be higher than what is actually required. Bob moved to take and interpret performance standards, put them into writing, and move to the Board of Health for adoption. Mike Lynn seconded the motion.

Joel Pinnix did not feel that this would be possible. Mike Lynn responded that it would be up to the board to decide and that the Sewage Advisory Board should request adoption of performance standards. Joel replied that the HB1166 Ad Hoc Committee should look into this issue. Mike stated that there exists ambiguity between the intention and the interpretation of the bill and that the AOSE's and manufacturers are not included in Ad Hoc Committee. Ray Freeland stated he couldn't support the use of standards in draft mode. He does not feel this is the right thing to do. He questioned if this is really a HB1166 issue. Marcia Degen stated that AOSE's and manufacturers should be included on the Ad Hoc committee and will recommend that the committee be expanded.

Bob Lee stated that the current standards are not sufficient for what needs to be accomplished.

Marcia Degen questioned if a legal interpretation of the matter should be provided. What do performance standard requirements mean as they pertain to permits, GMP's, etc? Allen Knapp stated if may be possible to acquire one. Tom Basham asked that Allen seek a legal opinion of this.

A vote of the motion to interpret performance standards, put them into writing, and move to the Board of Health for adoption was taken. The vote yielded 5 nays, 2 ayes, and 2 abstentions. The motion failed.

Joel Pinnix asked if HB1166 is working or is it too early to tell? He thinks the group needs to wait and see. Tom Basham agreed with Joel and saw the elevation of the practice of engineering as a possible outcome. Marcia Degen queried the potential for unintended consequences. Could the result be “economic value engineering” and is that the intent of the bill? Should the design meet (bare) minimum standards or do better? Do no harm, she felt. Joel replied that the engineer must be able to justify the design. Ray Freeland

stated that he didn't see an end run around the manufacturers. He felt that the bill would allow for creativity in the designs.

Mike Lynn agreed that performance is key. Verification of performance is required by DEQ for discharging systems. Verification of system performance is critical, he felt.

Rick Blackwell, Blackwell Engineering, stated that unlisted treatment units are options that exist. After VDH denies a design with an unlisted treatment device, the design is brought before a 4 person engineering panel to determine if the system is an equal treatment device. The decision will be made by the 4 reviewing engineers and the design engineer as to whether the device can provide equivalent treatment.

Bob Lee stated that he felt standards are less stringent than we really want. He wanted to know how long treatment systems should be expected to work.

Bob Mayer was recognized to speak. He stated "Be careful what you ask for if you request GMP146 be rescinded or suspended".

Marcia Degen moved to request that AOSE and manufacturer representatives be added to the GMP146 Ad Hoc Committee. John Harper seconded the motion. The group vote yielded 1 nay with remaining all ayes and the motion carried. The group requested Pam Pruett draft a letter to request this.

Adjournment

- Joel Pinnix moved to adjourn the meeting. Bob Lee seconded the motion. The vote yielded all ayes and the motion carried.
- Marcia Degen informed the group that due to DEQ budget cuts, DWE would no longer be reviewing most plans unless they were WQIF Grant funded facilities.
- Tom Basham brought up the issue of scheduling new meetings. Joel Pinnix moved to cancel the December meeting but received no second. Comments were provided to the effect that the premise monthly meetings was to review proposed new regulations. Joel doesn't think monthly meetings are necessary. Tom Basham asked Allen Knapp if he thought we needed monthly meetings. Allen replied that Parts I, II, III, and IV of the new regulations should be ready for discussion at the December meeting. The General Assembly will be back in session in January. Tom indicated that meetings should be set with an allowance to cancel 10 days beforehand. An additional meeting was scheduled for January 23, 2009.